

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT, IN AND FOR PALM
BEACH COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

MANCIL'S TRACTOR SERVICE, INC., CASE NO. 502018CA013440XXXXMB

Plaintiff,

vs.

FEDERAL INSURANCE COMPANY,
LIBERTY MUTUAL INSURANCE COMPANY,
NATIONAL UNION FIRE INSURANCE CO. OF
PENNSYLVANIA, XL SPECIALTY INSURANCE
COMPANY, and ZURICH AMERICAN INSURANCE
COMPANY,

Defendants.

/

HUNT CONSTRUCTION GROUP, INC.,

Defendant in Intervention/Counterclaim Plaintiff,

vs.

MANCIL'S TRACTOR SERVICE, INC.,

Counterclaim Defendant.

/

HUNT CONSTRUCTION GROUP, INC.,

Third Party Plaintiff,

vs.

HW SPRING TRAINING COMPLEX, LLC,

Third Party Defendant.

/

FIRST AMENDED COUNTERCLAIM

As counterclaims against Hunt, and pursuant to Florida Rule of Civil Procedure 1.170, without waiving its Affirmative Defense that the Third Party Complaint is premature due to the non-satisfaction of conditions precedent, Third Party Defendant/Counter-plaintiff HW Spring Training Complex, LLC (“HW”) alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. This is an action for damages exceeding \$15,000.00, exclusive of interest, costs, and attorneys' fees.
2. Third Party Counter-defendant Hunt Construction Group, Inc. (“Hunt”) is an Indiana corporation with its principal place of business located in Indianapolis, Indiana and is authorized to conduct business in the State of Florida.
3. Third Party Counter-plaintiff HW is a Florida limited liability corporation with its principal place of business located in West Palm Beach, Florida.
4. Venue is proper in this Court, as Counter-defendant consented to venue in this Court, and commenced litigation by filing the underlying lawsuit to this Counterclaim. Moreover, the action accrued in Palm Beach County, Florida.

GENERAL ALLEGATIONS

5. On or about October 21, 2015, Hunt and HW (the “Parties”) entered a contract titled “Construction Manager at Risk Services” and related documents (collectively, the “Contract”) for the construction of a baseball training facility in Palm Beach County, Florida, referred to as the Ballpark of the Palm Beaches (the “Project”).

6. Under the terms of the Contract, in pertinent part, Hunt committed to numerous obligations to HW.¹ Those obligations, without limitation, included the following:

- a. Develop a comprehensive approach to completion of the Project in compliance with the Teams' required construction schedule and overall budget requirements and limitations.
- b. Advise key stakeholders on procedures, design sequence and phasing, coordination and scheduling of the work.
- c. Provide design, estimating and constructability reviews and advise on availability of materials and labor
- d. Provide preconstruction budgeting support related to overall project cost and associated costs of alternative designs or materials, life-cycle data, and possible cost reductions without loss of utility or performance.
- e. Provide Value Engineering analysis as required during the entirety of the Project.
- f. Provide an integrated design and construction schedule that addresses all design, procurement, and construction activities and sequences.
- g. Provide recommendations on project phasing and the need and impact of any necessary accelerated, fast-tracked or phased construction.
- h. Provide preliminary total project cost estimates with comparisons to preliminary budget expectations. Generate alternative design and cost reduction alternatives to the degree they are needed to reduce the project cost relative to the established budget.
- i. Develop an organization chart, for Teams' approval, reflecting the proper number and experience of staff necessary to carry out the complete construction of the Project.
- j. Generate a potential subcontractor bid list and maintain an active program of subcontractor solicitation to generate and determine market strength in all necessary disciplines.
- k. Develop a Bid List for the Teams' approval.
- l. Draft all invitations and solicitations for bid.
- m. Assemble all bid solicitation packages.
- n. Solicit, receive, review, and present all bid results to the Teams in the form of a Guaranteed Maximum Price (GMP) using the CM at risk format under Florida law.

¹ The Contract totals more than 500 pages. Third Party Counter-defendant Hunt is in possession of a full copy.

- o. Purchase all subcontractors as required to meet the established project schedule, ensuring that the full scope of the completed project is included in the GMP
- p. Properly staff the project to ensure efficient leadership and proper oversight of all construction operations.
- q. Provide information and support to LEED certification activities, as required.
- r. Manage and administer project cost and change order issues. Prepare all pay requisitions and coordinate any sales tax exemption procedures with local County officials to maximize savings to the Project.
- s. Develop and execute an operations start-up and commissioning schedule that allows phased, early, Team and vendor occupancy prior to project completion, as required for specific specialty areas including but not limited to concessions, AV/IT, sponsorship, and team operations areas.
- t. Develop a program for phased punch list development, completion and turnover.
- u. Provide stand-by trade support during initial facility and ballpark operations, including initial team and public events to ensure immediate reaction to system failures or start-up difficulties.
- v. Create a comprehensive library of Record Drawings, submittals and spare inventory for Team operational use.

7. Pursuant to the Contract, Hunt was required to furnish its best skill and judgment, using its best efforts to complete the Project in a manner consistent with the interests of HW.

8. Pursuant to the Contract, Hunt warranted that all workmanship would be in accordance with normal construction industry practices.

9. Pursuant to the Contract, Hunt warranted that all materials and workmanship would be in accordance with the Construction Drawings and Specifications.

10. Pursuant to the Contract, Hunt warranted that it would promptly repair or replace any defective, deficient work performed at the Project.

11. Pursuant to the Contract, Hunt was required to complete construction in accordance with the agreed upon Substantial Completion Date, Final Completion Date and Developer Occupancy Date, as defined in the Construction Schedule.

12. Pursuant to the Contract, Hunt was to provide a completed and contractually compliant Project within the guaranteed maximum price (“GMP”) established in the Contract.

13. Hunt was further obligated to manage the project, the schedule and its subcontractors in the same manner that reasonably careful construction managers would.

14. Hunt failed to furnish its best skill and judgment, and to use its best efforts to complete the Project in a manner consistent with the interests of HW.

15. Hunt’s workmanship was not in accordance with normal construction industry practices.

16. Hunt’s materials and workmanship did not comply with the Construction Drawings and Specifications.

17. Hunt did not promptly repair and replace defective, deficient work performed at the Project.

18. Hunt failed to complete construction in accordance with the agreed upon Substantial Completion Date, Final Completion Date and Developer Occupancy Date.

19. Hunt failed to provide required items under the Contract, including:

- a. Failing to deliver necessary and contractually required documentation, including LEED certification documents, finalized and accepted commissioning report(s), warranty and surety bonds, manufacturer’s certifications and warranties, and manuals.
- b. Failing to deliver all required spare parts and special tools.

20. Hunt failed to ensure that its subcontractors performed their work in accordance with the Contract, including without limitation:

- a. Failing to ensure that the floors throughout the Project were appropriately installed and surfaced, including the floors in the wet areas, the visitors building, and the concrete decks.
- b. Failing to ensure that paint was applied or correctly applied in multiple areas in the project;

- c. Failing to ensure the ejectors at the stadium dugouts were installed correctly;
- d. Failing to ensure bat storage was installed and/or constructed correctly;
- e. Failing to install all required floor drains;
- f. Failing to ensure the concrete was installed without damage;
- g. Failing to properly install trash chutes;
- h. Failing to install room canopies as shown on the Contract Documents;
- i. Failing to ensure that wood trim and other finishes were done in accordance with the Contract Documents;
- j. Failing to ensure that the sidewalks were properly installed;
- k. Failing to ensure that the ADA lifts were properly installed;
- l. Failing to ensure gutters and downspouts were installed in accordance with the Contract Documents.

21. Hunt failed to complete the Project work, including without limitation:

- a. Failing to install all electrical outlets
- b. Failing to finish the installation of overhead canopies at the ticket offices, ballpark offices and guest services areas;
- c. Failing to correct numerous construction deficiencies, including without limitation those deficiencies identified in paragraph 21 above.

22. Hunt failed to manage the Project as required by the Contract and the applicable standards of care, including its failures set forth in paragraphs 12 through 21 above.

23. Hunt's failure to complete the Project and supervise the work as required by the Contract and applicable standards caused HW to incur significant damages, including paying its consultants significant additional costs.

24. Hunt's failure to appropriately manage the project and ensure work was done correctly and, when not, timely remedied, caused HW to incur and continue to incur significant

costs, including (a) costs for additional design and consulting services, (b) costs of repair, (c) costs to complete or otherwise perform Hunt's work.

25. In many instances, repair of Hunt's deficient work will require removal and replacement of other work which was done correctly, damaging that other work.

26. Hunt's failures have caused damage to other portions of the structure, including water damage to portions of the facility and artwork at the facility.

COUNT I – BREACH OF CONTRACT

27. HW realleges the allegations set forth in Paragraphs 1 through 26 as though stated herein.

28. HW and Hunt entered the Contact in which Hunt agreed to furnish certain services in the construction of the Project.

29. HW fully performed its obligations under the Contract.

30. Hunt breached its obligations under the Contract by failing to complete construction in accordance with the Contract and related documents and by substantially delaying completion of the Project.

31. Hunt's breaches have caused HW damages in an amount to be determined at trial, including but not limited to liquidated damages available under the Contract, costs to remedy defective work, and costs to complete work not yet finished.

COUNT II – NEGLIGENCE

32. HW realleges the allegations set forth in Paragraphs 1 through 26 as though stated herein.

33. Hunt owed HW the obligation to provide its services with reasonable care.

34. Hunt's failures were a breach of their obligation of reasonable care and constitute negligence.

35. HW has been damaged by Hunt's violation of its obligation of reasonable care and is entitled to recover those damages against Hunt.

COUNT III – PROFESSIONAL NEGLIGENCE

36. HW realleges the allegations set forth in Paragraphs 1 through 26 as though stated herein.

37. Hunt owed HW the obligation to provide its services in the manner that a reasonably careful construction manager would do in like circumstances.

38. Hunt's failures, as enumerated above, are breaches of their obligations to meet the required standard of care and constitute professional negligence.

39. HW has been damaged by Hunt's professional negligence, including negligent management of the project, and is entitled to recover those damages against Hunt.

WHEREFORE, HW requests that the Court enter judgment for damages against Hunt, together with interest, costs, attorneys' fees, and any and all further relief the Court may deem proper.

DATED this 2nd day of August, 2019.

GUNSTER, YOAKLEY & STEWART, P.A.

By _____ /s/ *Julia M.I. Holden-Davis*
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LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of August, 2019, I electronically filed the foregoing with the Clerk of the Court through Florida Court's E-Filing Portal (www.myflcouraccess.com), by using the E-Service Option, which will send a Notice of Electronic Filing, in compliance with Florida Rules of Judicial Administration Rule 2.516, to all counsel of record.

/s/ Julia M.I. Holden-Davis

Attorney

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